

ESTATE OF JIM JOE : Order Dismissing Appeal
:
: Docket No. IBIA 01-50
:
: April 18, 2001

On January 22, 2001, the Board of Indian Appeals (Board) received a notice of appeal from Marie Vecenti, for herself and her unnamed sisters and brother (Appellants). Appellants sought review of a November 28, 2000, order denying rehearing entered in the estate of Jim Joe by Administrative Law Judge Patricia McDonald. For the reason discussed below, the Board finds that this appeal must be dismissed.

In its January 26, 2001, predocketing notice, the Board noted that it was not clear if Appellants had served copies of their notice of appeal on the interested parties. It ordered Appellants to serve interested parties with copies of their notice of appeal and to inform the Board that they had done so on or before February 16, 2001.

The Board did not receive a response from Appellants.

On March 5, 2001, the Board received a motion from interested party Victor J. Clyde. Clyde asked the Board to dismiss this appeal for two reasons. Clyde's first argument was that the Board lacked jurisdiction over the appeal because Appellants had not served their notice of appeal on interested parties. In an interim order dated March 6, 2001, the Board noted that it had previously rejected this argument in Estate of Wilma Florence First Youngman, 10 IBIA 3 (1982). The Board stated in Youngman:

Appellee opposes this appeal principally on the grounds that the Board lacks jurisdiction because appellant failed to serve him with a copy of the notice of appeal. In support of his contention that service upon all interested parties is a jurisdictional prerequisite, appellee cites Estate of Grace First Eagle Tolbert (Talbert), 1 IBIA 209, 79 I.D. 13 (1972). In that case the Board construed [43 C.F.R.] section 4.291(b) of its former regulations, [published at] 36 FR 7185, 7199 (Apr. 15, 1971). That regulation stated in pertinent part:

It is a jurisdictional requirement that, at the time of filing the original notice [of appeal], [the appellant] shall forward copies of the notice of appeal by regular mail or otherwise to all Superintendents

named on the [Examiner of Inheritance's] notice of decision, to all parties who share in the estate under the decision being appealed, and to all other parties who have appeared of record.

* * * Although appellee notes that "the former regulations were more stringent regarding service" (Appellate Memorandum at 3-4), he fails to note that section 4.291(b) had been amended to delete the phrase "[i]t is a jurisdictional requirement that" [36 FR 24813, 28414 (Dec. 23, 1971)] and that 43 CFR 4.320 (1981) was the regulation in effect at the time the * * * order in this case was issued. Under the current regulations, the Board is not deprived of jurisdiction by the failure of the appellant to serve interested parties with a copy of the notice of appeal.

10 IBIA at 5-6.

Clyde's second reason for dismissal was based on Appellants' failure to respond to the Board's January 26, 2001, predocketing notice which required them to certify that they had served copies of their notice of appeal on all interested parties. In its March 6, 2001, order, the Board gave Appellants until March 30, 2001, in which to show why their appeal should not be dismissed for this reason. The order stated: "Failure to make this showing * * * will be grounds for dismissal of this appeal for failure to prosecute."

On April 2, 2001, the Board received separate responses from Appellants Vecenti and Anslem Joe. Both responses indicated service of the response on interested parties, but neither showed that the notice of appeal had been served on interested parties.

Appellants were given two opportunities to serve their notice of appeal on interested parties. They have failed to certify that they have done so. Under these circumstances, the Board finds that this appeal must be dismissed. See, e.g., Estate of Arden Edmund Post, Sr., 35 IBIA 77 (2000); Estate of Vonsell Ann Eldridge, 31 IBIA 182 (1997); Running Fisher v. Billings Area Director, 31 IBIA 54 (1997).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge McDonald's November 28, 2000, order denying rehearing is dismissed for failure to prosecute.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge